

**IN THE SUPREME COURT OF PENNSYLVANIA  
MIDDLE DISTRICT**

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**129 MAL 2022**

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**COMMONWEALTH OF PENNSYLVANIA,**

**Appellee,**

**v.**

**RAHSAAN O. MAY,**

**Appellant.**

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**Brief of Amicus Curiae Community Legal Services, Philadelphia Lawyers for Social Equity, and Pennsylvania Legal Aid Network in Support of Appellant Rahsaan May**

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Petition for Allowance of Appeal from the Order of the Superior Court of Pennsylvania, affirming the Judgment of Sentence Entered at No. CP-23-CR-0004281-2018

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## **Joined Statement of Interest of Amicus Curiae**

*Amicus Curiae* Community Legal Services of Philadelphia (“CLS”) is a legal services nonprofit dedicated to providing free legal services to low-income Philadelphians with civil legal needs. The Employment Unit helps people with criminal records overcome legal barriers to employment, assisting over 1,000 Philadelphians per year with record clearing and employment advocacy. Other areas of CLS legal practice, including family advocacy, public benefits, and housing, also serve clients who are deeply impacted by their contact with the criminal legal system, which thrusts them deeper into poverty.

Philadelphia Lawyers for Social Equity (“PLSE”) is a legal services nonprofit working to improve outcomes for low-income individuals who have had contact with the criminal justice system. PLSE does this through direct service, strategic litigation, research, and legislative advocacy. PLSE has expertise with respect to the collateral consequences of the collection of fines, costs, and restitution in criminal cases. These costs have significant impact upon indigent defendants, much of which can be prevented or ameliorated if courts consider defendants’ ability to pay at sentencing.

The Pennsylvania Legal Aid Network, Inc. (“PLAN”) is a client-centered nonprofit organization that coordinates a statewide system of independent legal aid programs providing civil legal assistance to low-income individuals and families,

as well as victims of domestic violence. The various programs that PLAN funds provides direct representation to individuals in every Pennsylvania county and offers a continuum of critically needed legal information and advice. PLAN's programs provide representation to low-income households on cases involving expungement, pardons, and other collateral consequences of criminal charges and convictions that are barriers to employment. PLAN appears as *amici* because its client base is directly affected by the outcome of this proceeding. We respectfully submit this brief together to provide illustration to the court of the wide-ranging impact of these costs upon the lives of people living in poverty, and why courts should act within the guidelines of the law to prevent that harm.<sup>1</sup>

### **Summary of the Argument**

As more and more people have been pulled into contact with the criminal system over the past several decades, low-income individuals, families, and communities have been hit hard by the dual economic impact of criminal records and criminal court debt. Criminal records often put meaningful employment out of reach, sometimes for years or even decades after system contact. Criminal records also create barriers to housing, public benefits, and family stability, making it more likely that poor people with records will remain trapped in poverty.

For these reasons, in Pennsylvania and around the country there has been a

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<sup>1</sup> No other person or entity authored or paid in whole or in part for the preparation of this brief.



bipartisan movement to expand access to criminal record clearing, which is one of the most important tools to help people with records escape a life sentence to poverty. As this Court observed in *Commonwealth v. Giulian*, “intended remedial impact of the expungement statute with respect to low-level offenses reveals obvious practical humanitarian objectives.”<sup>2</sup> Unfortunately, however, record expungement and pardons remain out of reach for otherwise eligible people who have the misfortune of being too poor to pay their criminal court debts.

Such individuals are also more likely to have other types of debts they cannot afford to pay, like child support debt and mortgage debt. Compounding criminal court debt drags low-income families deeper into poverty and diverts resources from going toward supporting families and children.

The Superior Court’s decision in this case that Pa.R.Crim.P. 706(C) and 42 Pa. C.S. § 9726 do not require courts to consider ability to pay at the time of imposition of mandatory fines will further perpetuate the hardships and inequities faced by poor people in the criminal system. The Superior Court’s ruling would in practice mean that poor people would lack access to record clearing, face default of their debts, accrue additional collection fees, and suffer adverse consequences to their credit and ability to access housing unless and until the Commonwealth decided to threaten incarceration, at which point, at last, considerations of

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<sup>2</sup> 636 Pa. 207, 220 141 A.3d 1262 (2016).

indigency would come into play. Even then, though, under the Superior Court’s reasoning a court would be seemingly powerless to actually relieve the defendant of an unaffordable mandatory fine—the defendant may not go to jail, but the other harms would continue indefinitely.

As experts in the devastating and often life-long consequences of criminal records, *Amicus* CLS, PLSE, and PLAN have substantial experience with how unaffordable court costs have reverberating repercussions on the lives of not only the individuals upon whom the costs have been imposed, but their families and communities as well, entrenching poverty and stunting local economies.

### Argument

#### **1. Failure to Consider Inability to Pay Fines Absent a Threat of Incarceration Perpetuates Poverty by Preventing Indigent Individuals from Clearing their Records**

##### ***a. Mandatory fines prevent people from accessing clemency.***

When one third of Pennsylvanians have a criminal record, every effort must be made to ensure that those with criminal records are able to function effectively in society, and at the very least, meet their basic needs.<sup>3</sup> People with criminal records face substantial barriers to employment, housing, public benefits, education, and even the ability to keep their families together.

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<sup>3</sup> “Correctional Control 2018: Incarceration and supervision by state” on the website of the Prison Policy Initiative at [https://www.prisonpolicy.org/graphs/correctional\\_control2018/PA\\_correctional\\_control\\_2018.html](https://www.prisonpolicy.org/graphs/correctional_control2018/PA_correctional_control_2018.html) (last accessed October 29, 2021).

Fortunately, Pennsylvania is a state that has a meaningful and robust pardon process that provides some relief to people with conviction records who have demonstrated rehabilitation. Unfortunately, the pardon process is out of reach for those who cannot afford to pay their court debt. Recently, the Board of Pardons announced a new policy that all parties seeking a pardon must have their legal financial obligations fully paid off before they can be scheduled for a hearing.<sup>4</sup> PLSE and CLS represent dozens of pardon applicants every year. Although many people apply for pardons after decades have passed and they have completely changed their lives, their old convictions still hold them back if they cannot afford to pay their court costs. While many pardon applicants demonstrate substantial community service, volunteering, work history, family support, and other positive elements of their lives, due to the stigma caused by criminal records many applicants also continue to live in poverty. Even after decades have passed, they have been unable to fully pay off the hundreds, or even thousands, of dollars in criminal court debt they owe. Providing equal access to clemency is essential to creating a more robust workforce and economy.<sup>5</sup> Excluding thousands of able and willing people from the workforce benefits no one, and instead creates entire communities, neighborhoods, and families that languish in poverty.

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<sup>4</sup> Pa. Board of Pardons, Legal Financial Obligations, (last visited Apr. 19, 2021), <https://www.bop.pa.gov/Pages/Fines-and-Costs.aspx>.

<sup>5</sup> See The Economy League of Greater Philadelphia, 2020. Pardons as an Economic Investment Strategy: Examining a Decade of Data.

PLSE recently conducted a study on the impact that court fines and costs have on pardon clients, which showed that the vast majority of clients who began making payments towards their court debts later defaulted. Although all PLSE clients are indigent and thus eligible for free legal services,<sup>6</sup> the average court debt for a PLSE client was \$1,664.88 at the time of the study.<sup>7</sup> If the courts are not expected to respond to requests for relief until the threat of incarceration arises, then there will be no hope of relief for the indigent defendants to ever be relieved of their debt.

Court debts are rarely ever successfully collected from indigent individuals who cannot pay, and mandatory fines are ineligible for waiver under the Superior Court's ruling. The result is that they would remain stuck with unaffordable costs and would thus be locked out of the pardon process forever. A meaningful system of justice cannot be one in which those with financial means are the only people ever allowed to move past their criminal system contact.

***b. Court debts cause an inability to clear records and prevent access to employment, housing, education, and more.***

In addition to prohibiting access to the pardon process, expungement eligibility is severely limited by ability to pay off fines. Generally, offenses ending

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<sup>6</sup> Legal Services Corporation, Income Level for Individuals Eligible for Assistance, 86 FR 7350.

<sup>7</sup> Philadelphia Lawyers for Social Equity, Costs and Fees Charged To Indigent Criminal Defendants In Philadelphia County, January 6, 2021 (last visited Apr. 19, 2021), <https://www.plsephilly.org/wp-content/uploads/2021/01/PLSE-Costs-and-Fees-Data-Report-Jan-2021.pdf>.

in conviction are not eligible for expungement. However, there are limited circumstances in which convictions are eligible for expungement, including underage alcohol convictions after the defendant turns 21 years of age; summary convictions after a 5-year period arrest-free; and conviction expungements after the defendant has turned 70 and can demonstrate a 10-year period arrest-free. The Administrative Office of Pennsylvania Courts (AOPC) takes the position that expungement for summary convictions and for convictions for individuals who are over 70 years of age cannot be processed when court fines and costs are still owed. Additionally, when an individual enters a diversionary program, fines and costs are assessed. Diversionary programs are designed to connect people to services, divert them away from incarceration, and often allow them to have their records expunged. However, many individuals are unable to complete the program because the fines and costs imposed exceed their financial means.

While Clean Slate makes it possible to seal non-conviction data even if individuals have not paid all costs,<sup>8</sup> the data is still accessible by law enforcement and by an FBI background check conducted by a prospective employer, which means that it still serves as a barrier to employment absent an expungement. Many Pennsylvanians seeking work in industries that serve as major employers for people without a college education such as security or healthcare, will be precluded

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<sup>8</sup> PA. Cons. Stat. 18 Pa.C.S.A. Crimes and Offenses § 9122.2.

from these jobs because their criminal records cannot be expunged without an unreasonable financial cost to them. Thus, the inability to expunge a criminal record because of costs that the individual cannot afford without a job, and the inability to get a job because of a criminal record, create a vicious and frustrating circle that ensnarls thousands of people in poverty, without prospects or hope of amelioration.

When individuals cannot clear their criminal records due to court debt, it has a direct impact on their ability to secure employment or advance their careers. Technological advances have led to the rise of the commercial criminal background check industry, relied upon by employers and landlords.

As this Court recognized in *Commonwealth v. Giulian*,<sup>9</sup> “11% of employers reported a minor infraction would disqualify candidate from employment; in another study, researchers found existence of criminal record reduced likelihood of callback or job offer by nearly 50%,” and that criminal records generally constitute “barriers to employment, housing and education.”<sup>10</sup> A 2015 survey revealed that 90 percent of responding employers used background checks for all or some of their applicants.<sup>11</sup> Researchers have found that if a job candidate has a criminal record,

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<sup>9</sup> 636 Pa. 207, 141 A.3d 1262 (2016).

<sup>10</sup> *Id.* at 220 (citations omitted).

<sup>11</sup> Roy Maurer, More Employers Letting Candidates Explain Conviction Records, Soc’y for Human Res. Mgmt. (May 15, 2015).

their likelihood of receiving a callback shrinks by nearly 50 percent.<sup>12</sup> The odds are even worse for Black applicants with criminal records.<sup>13</sup> Additionally, research shows that as early as a year after having their records expunged, individuals' employment opportunities increased by 11 percent and wages increased by 22 percent.<sup>14</sup> Thus record clearing is an important tool to connect people to employment and higher wages. Low-income people who cannot afford to pay court debt are among those who would most benefit from such opportunity.

The inability to access pardons and expungements because of outstanding courts costs also impacts ability to secure housing. A national community-driven report led by The Ella Baker Center revealed that 79 percent of returning citizens stated that they were ineligible or denied housing because of their criminal history or their loved one's criminal history.<sup>15</sup> The report also shared that municipalities in most states require criminal background checks for public housing applicants.<sup>16</sup> Applicants may be denied access to housing because of their criminal convictions, or their loved ones can be evicted for providing them shelter.

Access to higher education is also limited when criminal histories are not

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<sup>12</sup> *Id.*

<sup>13</sup> Devah Pager, Bruce Western & Naomi Sugie, Sequencing Disadvantage: Barriers to Employment Facing Young Black and White Men with Criminal Records, 623 *Annals Am. Acad.*, 195, 199 (2009).

<sup>14</sup> Sonja Starr and J.J. Prescott, "Michigan Set-Asides Found to Increase Wages and Reduce Recidivism," *Federal Sentencing Reporter* 30 (4-5) (2018): 361-362.

<sup>15</sup> Saneta deVuono-powell, Chris Schweidler, Alicia Walters, and Azadeh Zohrabi. *Who Pays? The True Cost of Incarceration on Families*. Oakland, CA: Ella Baker Center, Forward Together, Research Action Design, 2015.

<sup>16</sup> *Id.*

able to be cleared because of outstanding court debt. In a survey of 273 colleges, 66 percent of the responding colleges revealed that they collect criminal justice information.<sup>17</sup> The survey also revealed that 61 percent of the responding colleges consider criminal justice information, and a quarter of the responding schools reported that they have created automatic bars to admission based on criminal justice information.<sup>18</sup>

Finally, outstanding court debt can be a direct barrier to economic opportunity. For example, Job Corps, the largest free residential education and job training program for young adults ages 16 to 24, does not accept applicants with fines and restitution in excess of \$500.<sup>19</sup> Young people who apply to Job Corps are often in a very vulnerable financial situation and could benefit greatly from the housing, education, and employment opportunities Job Corps provides. Yet the young people who need access to this program the most are excluded from a transformational life experience because of outstanding court fines.

**2. The Proliferation of Criminal Records and Ballooning Court Debts Contribute to Economic Instability for Low-Income Pennsylvanians, with Disproportionate Impact on Communities of Color.**

***a. The rise of criminal system contact has led to a dramatic increase in Pennsylvanians living with criminal records.***

The rise of mass incarceration in America has greatly contributed to an

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<sup>17</sup> The Center for Community Alternatives Reconsidered: The Use of Criminal History Records in College Admissions (2010).

<sup>18</sup> *Id.*

<sup>19</sup> U.S. Department of Labor, Office of Job Corps, Policy and Requirements Handbook (Dec. 21, 2016).



increase in low-income individuals, disproportionately people of color, who have come into contact with the criminal system and thus face both staggering criminal court debts and the devastating consequences of criminal records.

Changes in sentencing law and policy have crowned the United States the world's leader in incarceration. Sentencing policies from the "War on Drugs" era resulted in dramatic growth in incarceration for drug offenses.<sup>20</sup> Today, more than 1.5 million Americans are incarcerated in state and federal prisons, which is four times more than were incarcerated in 1980. Adding in local jails, there are 2.2 million Americans behind bars.<sup>21</sup>

Misdemeanor convictions and probation-only sentences have proliferated as well. Researchers estimate that 13.2 million misdemeanor cases are filed in the United States each year.<sup>22</sup> In 2016, 291,600 Pennsylvanians were on probation or parole.<sup>23</sup>

As a result of the drastic rise in contact with the criminal system, the U.S. Department of Justice now estimates that there are 110 million people with

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<sup>20</sup> The Sentencing Project, "Trends in U.S. Corrections" (2013), *available at* [http://sentencingproject.org/doc/publications/inc\\_Trends\\_in\\_Corrections\\_Fact\\_sheet.pdf](http://sentencingproject.org/doc/publications/inc_Trends_in_Corrections_Fact_sheet.pdf).

<sup>21</sup> The Sentencing Project, "Americans with Criminal Records" (2014), *available at* <https://www.sentencingproject.org/wp-content/uploads/2015/11/Americans-with-Criminal-Records-Poverty-and-Opportunity-Profile.pdf>.

<sup>22</sup> The Scale of Misdemeanor Justice, 98 B.U. L. Rev. 731 (2018), *available at* <http://www.bu.edu/bulawreview/files/2018/06/STEVENSON-MAYSON.pdf>.

<sup>23</sup> U.S. Dep't of Justice, Bureau of Justice Statistics, *Correctional Populations in The United States* (2016). Available at <https://www.bjs.gov/content/pub/pdf/cpus16.pdf>.

criminal history records in the United States.<sup>24</sup> There are approximately 2.8 million (2,829,800) people in Pennsylvania with criminal records.<sup>25</sup> Technology has also made these records far more accessible, with many states including Pennsylvania providing free public access to records, as well as contracting with private commercial background check companies that provide reports to employers and landlords. This rise in criminal system contact and the number of individuals living with criminal records is accompanied by another related trend – a rise in ballooning criminal court debt.

***b. The growth of criminal court debt disproportionately burdens low-income communities, particularly communities of color.***

The growing numbers of Pennsylvanians who have been incarcerated or sentenced to probation have also faced an increase in the number and total amount of court fines they owe. Fines are assessed upon sentencing for criminal convictions, supervision fees, bail assessments, diversionary programs, and more. Individuals sentenced only to probation on minor misdemeanor sentences can still end up owing thousands of dollars in court fines.

These debts add up. It is estimated that ten million Americans owe governments a total of 50 billion dollars in court-imposed fines and costs.<sup>26</sup> In

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<sup>24</sup> U.S. Dep't of Justice, Bureau of Justice Statistics, *Survey of State Criminal History Information Systems* (2016). Available at <https://www.ncjrs.gov/pdffiles1/bjs/grants/251516.pdf>.

<sup>25</sup> *Id.*

<sup>26</sup> Peter Edelman, *How It Became A Crime To Be Poor in America*, *The Guardian*, (Nov. 6, 2017). Available at <https://www.theguardian.com/commentisfree/2017/nov/06/how-poverty-became-crime-america>.

Pennsylvania, the Administrative Office of Pennsylvania Courts reported that courts collected nearly \$483 million in fines, costs, and restitution in 2017, including \$130 million paid online through PAePay.<sup>27</sup>

The FJD collects debts by: (1) working with PennDOT to suspend drivers licenses of defendants who have failed to pay traffic related court costs; (2) working with the Department of Revenue to intercept tax refunds over \$25 dollars and lottery winnings over \$2,5000; and (3) working statewide with collections agencies.<sup>28</sup> Despite these funds collected, the FJD has also reported that, of those individuals who still owe money to the courts, seventy percent are unemployed.<sup>29</sup> Thus, the court is already collecting successfully from those who can afford to pay. But as the adage goes – the court cannot draw blood from a stone. Assessing exorbitant debts on individuals who lack incomes does nothing to help fund the courts, and rather throws individuals and families deeper into poverty.

Given that communities of color are more likely to be arrested, convicted, and incarcerated, they are also more likely to be burdened by court debt. African Americans make up 12 percent of the Pennsylvania’s population.<sup>30</sup> Nationwide,

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<sup>27</sup> See, e.g., News Release, Administrative Office of Pennsylvania Courts, Pennsylvania Courts Collect \$483 million in 2018 (Feb. 25, 2019), available at <http://www.pacourts.us/assets/files/newsrelease-1/file-7591.pdf?cb=7cb299>.

<sup>28</sup> See <https://www.courts.phila.gov/departments/courtcompliance>.

<sup>29</sup> FIRST JUDICIAL DISTRICT CRIMINAL COURTS COMMONWEALTH OF PENNSYLVANIA, THE REFORM INITIATIVE, INTERIM REPORT 38 (July 2011), available at <https://www.courts.phila.gov/pdf/report/ri/The-Reform-Initiative-Interim-Report.pdf>.

<sup>30</sup> United States Census Bureau, Quick Facts, *Pennsylvania* (2018), available at <https://www.census.gov/quickfacts/PA>.

African Americans make up a similar percentage of the population, yet make up 27% of all arrests, and 44% of those convicted of felonies.<sup>31</sup> African-Americans thus disproportionately bear the burden of court-imposed fines.

This phenomenon is not exclusive to Pennsylvania. The United States Department of Justice investigated Ferguson Law Enforcement Efforts in 2015 and found that the Ferguson generated a significant amount of revenue from imposing excessive fines and fees. Ferguson collected \$2.46 million dollars in fines and fees during the 2013 fiscal year.<sup>32</sup> African Americans who make up 67% of the city's population bore that price tag.<sup>33</sup>

There is growing recognition around the country that governments need to look at the impact of ballooning court debts on low-income individuals and communities of color as a serious barrier to economic stability, prosperity, and public safety.

- 3. Trial Courts Can Easily and Efficiently Determine Ability to Pay.**
  - a. The standard to evaluate indigency in criminal cases already exists, greatly simplifying the trial court's process of determining whether or not to waive costs.***

Determining whether a person can afford to pay all levied fines, an adjusted fine, or—if the person is indigent and unable to meet his basic life needs—no fine,

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<sup>31</sup> Federal Bureau of Investigation, Uniform Crime Reports, *Crime in the United States* (2003). Available at <https://ucr.fbi.gov/crime-in-the-u.s/2003>

<sup>32</sup> United States Department of Justice Civil Rights Division, Investigation of The Ferguson Police Department (March 4, 2015). Available at [https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson\\_police\\_department\\_report.pdf](https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf)

<sup>33</sup> *Id.*

is not complex and does not necessarily require a hearing. In *Ford*, this Court astutely noted that “in many cases the trial court will be able to ascertain the defendant's ability to pay by asking one simple question: ‘How do you plan to pay your fines?’”<sup>34</sup> That will be the extent of the inquiry for the many, but not all, individuals who agree they can pay. For those who respond that they cannot pay, there is already an established body of case law that defines the floor of who is indigent and thus unable to pay any costs: the *in forma pauperis* (“IFP”) standard. Even without holding a formal hearing, a trial court can use the straightforward standards already set forth in the IFP case law to determine, consistent with Rule 706(C) and Section 9726, whether the burden of the proposed fine or fines is too much to impose.

The bright-line standard to determine whether someone is too poor to pay is “whether he is able to obtain the necessities of life.” *Gerlitzki v. Feldser*, 307 A.2d 307, 308 (Pa. Super. Ct. 1973) (en banc). *See Shore v. Pennsylvania Department of Corrections*, 645 Pa. 236, 241 (Pa. 2018) (Wecht, J., concurring) (no one should have to choose between paying “or foregoing the necessities of life”). A person who cannot afford those necessities is “in poverty, [and] it follows that they are unable to pay the costs.” *Id.* In other words, someone who cannot afford the “items and services which are necessary for his day-to-day existence” is unable to pay,

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<sup>34</sup> *Commonwealth v. Ford*, 217 A.3d 824, 831 (Pa. 2019)

“despite the fact that he may have some ‘excess’ income or unencumbered assets.” *Stein Enters., Inc. v. Golla*, 426 A.2d 1129, 1132 (Pa. 1981). Such needs include things like food, shelter, medical care, dependent care, transportation, and other things necessary for life. *See, e.g., Amrhein v. Amrhein*, 903 A.2d 17, 22-23 (Pa. Super. Ct. 2006) (listing rent, utilities, the costs of health insurance and explaining that individuals “obviously need to eat and be clothed”). No fines should be imposed on individuals who cannot afford one or more of those necessities.

Thus, if the court is confronted with an individual who receives means-based public assistance such as food stamps from the Supplemental Nutrition Assistance Program (“SNAP”), Medicaid, subsidized Section 8 housing through the U.S. Department of Housing and Urban Development, or disability benefits in the form of Supplemental Security Income (“SSI”) through the U.S. Social Security Administration, then the person is *per se* unable to afford to pay fines. Such information can be easily provided to the trial court by the individual or counsel without the need for a hearing, and application of these IFP standards creates an easily administrable standard for trial courts across the Commonwealth.<sup>35</sup>

Additionally, using the IFP standards comports with existing criminal case

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<sup>35</sup> Other States have also linked civil IFP standards and criteria to criminal fines and costs. For example, in *City of Richland v. Wakefield*, 380 P.3d 459, 464 (Wash. 2016) (en banc), the Supreme Court of Washington “reiterate[d]” that “courts can and should use [the civil rule governing IFP eligibility] as a guide for determining whether someone has an ability to pay costs,” and “courts should seriously question that person’s ability to pay” fines and costs if they meet those standards, both at “imposition and enforcement” for nonpayment.

law about when someone is too poor to pay, including when a fine should not be imposed. *See Commonwealth v. Eggers*, 742 A.2d 174, 176 n.1 (Pa. Super. Ct. 1999) (receipt of means-based public assistance and representation by the public defender “invite the presumption of indigence”); *Commonwealth v. Gaskin*, 472 A.2d 1154, 1157-58 (Pa. Super. Ct. 1984) (court cannot impose a fine on a defendant who has no “financial assets [or] liabilities” and has been “living from hand to mouth.” *Cf. Commonwealth v. Hendrick*, 312 A.2d 402, 404 (Pa. 1973) (reversing a finding of contempt for failure to pay where “the only testimony in the trial court was that [the defendant] was then penniless and unable, through no fault of his own, to pay any sum on the delinquencies”).

The benefit of this approach is not only the ease of application of the straightforward bright-line standard, but also that existing case law already uses the IFP standards to address whether someone is indigent in criminal cases. The Superior Court has already instructed that trial courts should look to the “established processes for assessing indigency” through IFP standards when determining whether certain costs should be waived in criminal cases<sup>36</sup> because of the comparative “dearth of case law” in criminal cases, compared with the “well-established principles governing indigency in civil cases.”<sup>37</sup>

Thus, this Court need not reinvent the wheel in order for courts to apply

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<sup>36</sup> *Commonwealth v. Cannon*, 954 A.2d 1222, 1226 (Pa. Super. Ct. 2008)

<sup>37</sup> *Commonwealth v. Lepre*, 18 A.3d 1225, 1226-27 (Pa. Super. Ct. 2011)

easy, straight-forward and bright-line standards to identify who is too poor to pay costs—all without the need for a formal hearing. The existing IFP case law already offers what trial courts need to comply with Rule 706(C) when faced with an individual who is indigent.

### **Conclusion**

We urge this Court to recognize the two-tiered system of justice that inevitably results from the Superior Court's ruling in this case, whereby low-income people who cannot afford to pay their criminal court debts and have not been threatened with incarceration nevertheless face a lifetime of poverty. Unable to clear their records to access employment, housing, education and more, and facing compounding debts, low-income people not only remain trapped in poverty but can fall even further behind, whereas people with means are able to move past their system contacts with relative ease. This unequal system of justice negatively impacts not only individuals, but has a significant impact upon low-income families and communities of color as well. This Court should hold that lower courts must act to lessen the unequal impacts of court-imposed fines on people living in poverty by considering ability to pay at the time of sentencing.



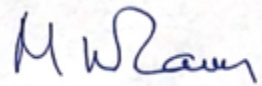
Respectfully submitted,

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**CERTIFICATE OF COMPLIANCE WITH WORD LIMIT**

I certify pursuant to Pa.R.A.Ps. 531 that this brief does not exceed 7,000 words.

**CERTIFICATE OF COMPLIANCE**

I certify that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing document was served upon the parties at the addresses via PACFile.

Dated: March 17, 2021

/s/ Jamie Gullen  
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